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 CORP. and MATROX TECH, INC. and for Plaintiff  
 SYNOPSYS, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

RICOH COMPANY, LTD.,

Plaintiff,

vs.

AEROFLEX INCORPORATED, et al.,

Defendants.

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD., a Japanese  
 corporation

Defendant.

Case No. C03-04669 MJJ (EMC)

Case No. C03-2289 MJJ (EMC)

**OPPOSITION AND RESPONSE TO  
 RICOH'S MISCELLANEOUS  
 ADMINISTRATIVE REQUEST PURSUANT  
 TO CIVIL L.R. 7-10(b) TO STRIKE  
 OVERLONG OPPOSITION BRIEF AND TO  
 SET BRIEFING SCHEDULE AND LENGTH  
 FOR REPLY BRIEF**

OPPOSITION AND RESPONSE TO RICOH'S  
 MISCELLANEOUS ADMINISTRATIVE REQUEST  
 TO STRIKE  
 Case Nos. 03-04669 MJJ(EMC) & 03-02289 MJJ(EMC)

1       **I.       ARGUMENT**

2       Synopsis and the seven Defendants oppose Ricoh's procedurally improper and substantively  
 3       unjustified request to: (1) strike Synopsis' and Defendants' Responsive claim construction brief; (2)  
 4       preclude Synopsis' and Defendants' from even presenting extrinsic evidence in its brief; (3) permit  
 5       RicoH to file a second over-length brief—i.e., a reply brief; and (3) permit RicoH extended time so that  
 6       it can file that over-length reply brief.

7       RicoH's opening claim construction brief, as filed, is well over 53 pages because it admittedly  
 8       includes text in 10-point font. RicoH filed this over-length brief without even attempting to meet and  
 9       confer with Synopsis and Defendants and more importantly without any attempt to seek the Court's  
 10      approval before filing it. RicoH's brief, therefore, violated this Court's Local Rules 3-4(c)(2) and 7-  
 11      4(b). Because of this and the hard-line tactics RicoH now engages in, it is RicoH's opening claim  
 12      construction brief that should be stricken not Synopsis' and Defendants'.

13      In sharp contrast to RicoH's complete disregard for the Local Rules and failure to even give  
 14      Synopsis and Defendants any advance notice of its intent to submit well over 53 pages for its opening  
 15      brief, Synopsis and Defendants prepared their responsive brief and sought RicoH's agreement before  
 16      filing an over-length brief. Rather than seeking to have RicoH's brief stricken, Synopsis and  
 17      Defendants, while preparing their papers within the two week period provided in the scheduling order  
 18      agreed to by the parties months ago, obtained and filed a stipulation by the parties agreeing to RicoH's  
 19      already-filed over-length brief and to Synopsis and Defendants filing a responsive brief not to exceed  
 20      80 pages. That stipulation was filed on Wednesday, September 8, 2004—i.e., two days before  
 21      Synopsis and Defendants responsive brief was due on September 10, 2004.

22      On Friday, September 10, 2004, Synopsis and the seven Defendants filed one responsive claim  
 23      construction brief that was 69 pages—well within the 80 pages agreed to by RicoH. On the following  
 24      court day, Monday, September 13, 2004, court staff e-filed an Order signed by the Court on September  
 25      10. The Court signed the proposed order provided with the parties' stipulation but modified the  
 26      parties' stipulation by crossing out the 80 pages and replacing it with 53 pages. Almost immediately  
 27      after receiving the Court's order, RicoH's counsel demanded that Synopsis and Defendants re-file their  
 28

1 brief reducing it to within 53 pages.<sup>1</sup> Before counsel for Synopsys and Defendants could respond to  
 2 these demands from Ricoh, Ricoh filed the instant Administrative Request. Because Defendants and  
 3 Synopsys will re-file their responsive claim construction brief later today, Ricoh's request to strike  
 4 Synopsys and Defendants brief is moot.<sup>2</sup>

5 Next, Ricoh seeks to improperly use the fact that the Court changed the parties agreed to  
 6 stipulation from 80 to 53 pages one Court day after Synopsys and Defendants filed their responsive  
 7 claim construction brief to support its baseless request to restrict the evidence that Synopsys and  
 8 Defendants may present to support their arguments.<sup>3</sup> Specifically, Ricoh improperly asks this Court to  
 9 preclude Synopsys and Defendants from even presenting any extrinsic evidence to support their  
 10 arguments. Such a request finds absolutely no support in the law. While the Court may or may not  
 11 choose to rely on extrinsic evidence to support its claim construction ruling in this case, nothing  
 12 precludes Synopsys and Defendants from presenting such evidence. In fact, the Court has already  
 13 rejected this argument by Ricoh.

14 Besides being already rejected by the Court, the Court should take notice of Ricoh's frantic  
 15 effort to prevent the Court from having any evidence of what the claims mean to one of skill in the art.  
 16 The reason for this is that Ricoh's constructions are contrary to how one of ordinary skill in the art  
 17 would understand the '432 patent's public record, *i.e.*, the '432 patent, its file history, and the prior art  
 18 cited therein. Thus, Ricoh wishes to keep any such evidence from the Court.

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21 <sup>1</sup> Earlier that day, Ricoh's counsel also requested a page extension to 50 pages for its Reply and an  
 22 extension of time until Wednesday, September 22, 2004.

23 <sup>2</sup> Ricoh complains that the paper filed exhibits to Synopsys' and Defendants' brief were not received  
 24 until the afternoon of Monday, September 13. In fact, those exhibits were hand delivered to Ricoh's  
 local counsel in San Francisco before the close of business on September 10, 2004.

25 <sup>3</sup> Ricoh also mischaracterizes Synopsys and Defendants brief by claiming that their over-length brief  
 26 was necessitated by their including of extrinsic evidence. Ricoh is wrong. Even a quick glance at  
 27 Synopsys' and Defendants' brief reveals that the added length can be attributed, for the most part, to  
 their including of large portions of the intrinsic evidence in their brief—*i.e.*, the claims, the  
 specification, and the file history.

1 Finally, Ricoh fails to adequately support its request for yet another over-length brief for its  
 2 reply or for the belated change to the scheduling order that it agreed and stipulated to months ago.  
 3 First, as noted above, Ricoh has already filed an over-length brief. Specifically, Ricoh exceeded the  
 4 page limit for its opening claim construction brief by well over 28 pages (*i.e.*, filed 53 pages that  
 5 included text in 10 point font). Ricoh has had Synopsys' and Defendants' positions on claim  
 6 construction since mid-July and there is simply no excuse for its failure to include its position in its  
 7 over-length opening brief. Thus, Ricoh has not provided any justification for a second over-length  
 8 brief.

9 Second, Ricoh stipulated to the existing scheduling order, which currently requires them to  
 10 serve and file their reply brief in the midst of Rosh Hashanah, on Friday, September 17, 2004. Ricoh's  
 11 counsel does not even claim that they were unaware that this scheduling order conflicted with this  
 12 Holiday when they agreed to this schedule. Ricoh's counsel never mentioned this conflict and has  
 13 never made any attempt (until after Synopsys and Defendants filed their claim construction brief) to  
 14 meet and confer with Synopsys and Defendants regarding this schedule. In fact, Synopsys' and  
 15 Defendants' time to respond to Ricoh's opening brief encompassed the Labor Day weekend holiday.  
 16 Thus, the parties could have agreed to a schedule, beforehand, accommodating everyone. Instead,  
 17 Ricoh's counsel belatedly seeks to accommodate only their schedule and obtain additional time for  
 18 Ricoh's reply. Ricoh has had Synopsys' and Defendants' position since mid-July and has had  
 19 Synopsys' and Defendants' brief since last Friday, September 10, 2004. Thus, Ricoh has not provided  
 20 any justification for its requested extension.

## 21 II. CONCLUSION

22 For all of the foregoing reasons, Ricoh's Administrative Request should be denied in its entirety.

23 Dated: September 14, 2004

24 HOWREY SIMON ARNOLD & WHITE, LLP  
 25 By: /s/ Thomas C. Mavrakakis  
 26 Thomas C. Mavrakakis  
 Attorneys for Plaintiff Synopsys and Defendants  
 Aeroflex, et al.